

# STATE BOARD OF EDUCATION

## ADMINISTRATIVE CODE COMMENT/RESPONSE FORM

**Topic:** State Board Appeals

**Meeting Date:** July 6, 2005

**Code Citation:** N.J.A.C. 6A:4

**Level:** Adoption Level

**Division:** Deputy Commissioner

**Completed by:** State Board Appeals  
Office

### **Summary of Public Comments and Agency Responses:**

The following is a summary of the comments received from the public and the department's responses. Each comment is identified at the end of the comment by a number, which corresponds to the following list:

1. Christopher D. Kniesler, Director of Governmental Relations  
New Jersey School Boards Association

### **SUBCHAPTER 1. GENERAL PROVISIONS**

**1. COMMENT:** The commentor states that N.J.A.C. 6A:4-1.9(b), which provides that the State Board may direct supplementation of the record below, should be clarified by amending it to specify that additional evidence may be taken by the Commissioner, through the ALJ, or through the State Board directly. **(1)**

**RESPONSE:** The department disagrees. The current regulation is clear. In appeals from decisions of the Commissioner, only the ALJ, the Commissioner, or the State Board may take additional evidence so that it is unnecessary to amend the regulation to specify that this is the case. Further, in addition to decisions of the Commissioner, the State Board decides appeals from decisions of the State Board of Examiners to revoke certification and from decisions of the School Ethics Commission. To be all inclusive would make the regulation unnecessarily confusing.

**2. COMMENT:** The commentor states that N.J.A.C. 6A:4-1.11(b) is unclear in directing the obligations of the appellant and cross-appellant in cases where a cross appeal has been filed. The commentor proposes revising the language of the regulation to provide that "the party that filed the initial appeal shall serve and file an appeal brief within 30 days of notice of the cross appeal." **(1)**

**RESPONSE:** The department disagrees. The language of the regulation is clear. It provides that "if a cross appeal is taken, the party first appealing shall serve and file an appeal brief within 30 days of notice of the cross appeal." Since the party who files first by definition is the appellant and since it is the appellant who files an appeal brief, there is no room for confusion that where a cross appeal is filed, the appellant has 30 days from notice of the cross appeal to file an appeal brief.

**3. COMMENT:** The commentor states that N.J.A.C. 6A:4-1.12(a) should be revised to authorize the parties to a matter to move for dismissal of an appeal upon the failure of another party to meet a filing deadline. **(1)**

**RESPONSE:** The department disagrees. Pursuant to this regulation, the State Board enforces the filing deadlines it has established for appeals before it. No special authority is needed to authorize a party to an appeal to file a motion, including a motion to dismiss an appeal because of the failure of another party to meet a filing deadline.

**4. COMMENT:** The commentor states that N.J.A.C. 6A:4-1.12(b) should re-written to give the State Board the explicit authority to close the record if the respondent to an appeal does not file an answer brief. **(1)**

**RESPONSE:** The department disagrees. There is no need to state in the regulation that the State Board has authority to close the record in an appeal if an answer brief is not filed. The regulation provides “if a respondent fails to meet the filing date for an answer brief, the record may be closed and the State Board may consider the matter on the record then before it.” The purpose of the regulation is to provide notice to the parties that a failure to file an answer brief may result in a decision by the State Board made without the benefit of a response to the appeal from the respondent, and it is not necessary for the regulation to specify that the State Board has the authority to do so.

**5. COMMENT:** The commentor states that N.J.A.C. 6A:4-1.13(b) should reference the court rules rather than specifying that all briefs must be typed and double-spaced. **(1)**

**RESPONSE:** The department disagrees. The procedural regulations governing appeals to the State Board are intended to provide clear notice to parties as to the requirements they must meet when appealing to the State Board. Those requirements are established by the regulations adopted by the State Board, not the court rules. Further, it is contrary to the purpose of the procedural regulations to impose unnecessary burdens on parties such as the need to obtain the court rules. The need to avoid unnecessary burdens is heightened because it is not uncommon for a party to act on his own behalf without representation from an attorney.

**6. COMMENT:** The commentor states that in providing that the State Board may order a brief or other paper that fails to preserve the anonymity of a minor to be suppressed, N.J.A.C. 6A:4-1.16(c) could be interpreted to mean that the entire document would not be considered. The commentor states that this could result in an injustice where a party has relied on the document and the regulation should be revised to limit the State Board’s authority in such cases to ordering redaction of the material. **(1)**

**RESPONSE:** The department disagrees. N.J.A.C. 6A:4-1.13(f), which governs the content of briefs, requires that all briefs must strictly preserve the anonymity of minors who are parties or witnesses in matters on appeal to the State Board by such means as using initials. In 1994, the State Board adopted N.J.A.C. 6A:4-1.16(c) to make it abundantly clear to litigants by providing notice in the strongest possible terms that a failure to preserve the anonymity of a minor will not be tolerated. Under the regulations, a failure to strictly preserve the anonymity of a minor as required by N.J.A.C. 6A:4-

1.13(f) may result in the suppression of a brief by the State Board under N.J.A.C. 6A:4-1.16(c). However, as provided by N.J.A.C. 6A:4-1.16(a), the State Board would direct the filing of a new brief within a fixed period of time. Hence, although the brief originally filed would not be considered, the party who had filed it would have the opportunity to file a brief that conforms to N.J.A.C. 6A:4-1.13(f) by using such means as redaction to preserve the anonymity of the minors involved in the matter.

## **SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS**

**7. COMMENT:** The commentor states that the 15 days provided to a district board by N.J.A.C. 6A:4-2.6(d) for filing exceptions to a Commissioner's recommendation that the State Board direct the creation of a State-operated school district is not sufficient time in which to prepare a defense and given the drastic nature of the action, the regulation should provide 45 days for the preparation of exceptions to the Commissioner's recommendation. **(1)**

**RESPONSE:** The department disagrees. A recommendation by the Commissioner that the State Board direct the creation of a State-operated school district can only be made after the procedures set forth in N.J.S.A. 18A:7A-14(e) and N.J.S.A. 18A:7A-15 are followed. Those include the issuance of a show cause order and a plenary hearing that meets applicable due process requirements. Hence, a school district subject to a Commissioner's recommendation for a State-operated school district has been provided with ample opportunity to prepare and present its defense, and all evidence presented in support of its defense is part of the record before the State Board when it acts on the Commissioner's recommendation. The 15 days provided for the filing of exceptions is consistent with the amount of time afforded to parties for filing exceptions in contested cases before the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes. Moreover, in those cases where 15 days is not sufficient, the State Board has to ability to extend the time limit.

**8. COMMENT:** The commentor raises the same concern that he expressed in the previous comment with respect to N.J.A.C. 6A:4-2.6(h), which provides that in the event that no notice of an intent to contest a Commissioner's recommendation to create a State-operated school district is filed or if no exceptions are filed within the 15 day time limit, the State Board will base its decision solely on the record certified to it by the Commissioner. **(1)**

**RESPONSE:** The department disagrees for the same reasons set forth in the response to the previous comment.